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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 INFERNAL TECHNOLOGY, LLC, a Texas
10 limited liability corporation, and
11 TERMINAL REALITY, Inc., a Texas corporation

12 *Plaintiffs,*

13 v.

14 ACTIVISION BLIZZARD, INC., a Delaware
15 corporation

16 *Defendant.*
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CASE NO.: MC19-0070RSL

[Civil Action No. 3:18-cv-1397-M,
pending in the United States District
Court for the Northern District of Texas]

**STIPULATION AND PROTECTIVE
ORDER**

NOTE ON MOTION CALENDAR:
JUNE 12, 2019

1 Plaintiffs Infernal Technology, LLC (“Infernal”) and Terminal Reality, Inc. (“Terminal”)
2 (collectively “Plaintiffs” or “Receiving Party”) and non-party Bungie Inc. (“Bungie”), having met
3 and conferred, submit the following Stipulation and [Proposed] Protective Order, and ask the Court
4 to enter an order consistent with this Stipulation.

5 WHEREAS, Infernal and Terminal are the Plaintiffs and Activision Blizzard, Inc.
6 (“Activision”) is the Defendant in *Infernal Technologies, Inc., et al. v. Activision Blizzard, Inc.*,
7 Civil Action No. 18-cv-1397-M (the “Action”), pending in the United States District Court for the
8 Northern District of Texas (the “Texas Court”);

10 WHEREAS, on February 19, 2019, counsel for Plaintiffs served a subpoena originating
11 from the Action in the United States District Court for the Northern District of Texas directing
12 Bungie to produce copies of confidential, commercially sensitive source code for its Destiny
13 products (herein, referred to as “Highly Confidential Information”);

15 WHEREAS, Plaintiffs and Bungie (together, the “Parties”) agree that the United States
16 District Court for the Western District of Washington is the court where compliance is required
17 pursuant to Fed. R. Civ. P. 45 and thus this Court has authority and jurisdiction to enter this
18 Stipulation and Protective Order;

19 WHEREAS, the parties agree that public dissemination and disclosure of the Highly
20 Confidential Information could injure or damage Bungie or place Bungie at a competitive
21 disadvantage;

23 WHEREAS, a Protective Order has been entered by the United States District Court for
24 the Northern District of Texas in the Action (Document No. 38) (the “Texas Protective Order”);

25 WHEREAS, Bungie as a third-party seeks protections for its discovery of Highly
26 Confidential Information in addition to those set forth in the Texas Protective Order;

1 WHEREAS, subject to the objections in Bungie's Responses and Objections to the
2 Subpoena to Produce Documents or Permit Inspection, dated March 15, 2019, Bungie will make
3 certain Highly Confidential Information available for inspection or production by the parties'
4 outside counsel subject to additional specific security procedures; and

5 WHEREAS, the parties agree to the following supplemental restrictions and procedures
6 under Fed. R. Civ. P. 26(c) to protect Bungie's Highly Confidential Information and to provide
7 the parties to the Action reasonably necessary access to that Highly Confidential Information, in
8 addition to those set forth by the Texas Protective Order.

9 NOW, THEREFORE, counsel for the Parties stipulate and agree as follows:

10 1. All Bungie source code available for inspection in response to Plaintiffs' subpoena,
11 shall be designated as "RESTRICTED HIGHLY CONFIDENTIAL NON-PARTY SOURCE
12 CODE," subject to the procedures, restrictions and protections of Paragraphs 10-13 of the Texas
13 Protective Order for "RESTRICTED CONFIDENTIAL SOURCE CODE" and the additional
14 procedures, restrictions and protections stated below. "DESIGNATED MATERIAL" as used in
15 the Texas Protective Order shall also include material designated "RESTRICTED HIGHLY
16 CONFIDENTIAL NON-PARTY SOURCE CODE." Bungie Highly Confidential Information
17 shall not be used for any purposes other than the prosecution and defense of the Texas Action and
18 shall not be given, shown, made available, discussed or otherwise communicated in any manner,
19 either directly or indirectly, to any person not authorized to receive the information under the terms
20 of this Stipulated Supplemental Protective Order.

21 2. Plaintiffs shall provide Bungie with written notice of intent to inspect Bungie's
22 source code at least five business days in advance of such inspection. Bungie shall make its source
23 code available for inspection in accordance with this Supplemental Protective Order.

1 3. Bungie will make source code available for inspection in native electronic format
2 at the offices of Wilson, Sonsini, Goodrich, and Rosati, 900 S. Capital of Texas Hwy Las Cimas
3 IV, Fifth Floor, Austin, Texas 78746, subject to the provisions of this Supplemental Protective
4 Order, or at a different location agreed to by the Plaintiffs and Bungie. Unless the Parties agree
5 otherwise, Bungie will load its source code on two non-networked computers that are password
6 protected and maintained in a secure, locked area, in a private room (the "Review Room"). The
7 non-networked computers shall not be connected to a phone line or have wireless or other external
8 electronic access.
9

10 4. Unless the Parties agree otherwise, source code inspection may be conducted
11 during normal business hours, 9:00 am to 5:30 pm local time, Monday through Friday (excluding
12 federal holidays). The Receiving Party shall have 60 hours to inspect the source code within a
13 three week period.
14

15 5. Bungie shall install the commercially available software tools listed in paragraph
16 5.a for viewing and searching source code on the source code computer(s) containing source code
17 at the requested date and time of inspection provided, however, that such software tools are in
18 compliance with all of the terms, conditions, and protections herein. Plaintiffs are responsible for
19 the cost of and for obtaining any necessary licenses for any such software tools. Plaintiffs shall
20 provide Bungie with a copy of the software tools listed in paragraph 5.a to facilitate review of the
21 source code at least five business days prior to the commencement of inspection. The software
22 tools provided by Plaintiffs shall not be modified by Bungie prior to or after installation on the
23 source code computer. Use of any input/output device (e.g., USB memory stick, CDs, floppy disk,
24 portable hard drive, etc.) is prohibited while accessing the computer containing the source code.
25 The Receiving Party is permitted to take only handwritten notes, if any, during the source code
26 inspection. No provision of this section gives Bungie the right to inspect or review any handwritten
27

1 notes or other work product of the Receiving Party. Similarly, no provision of this section limits
2 and/or waives any Bungie rights under the Federal Rules of Civil Procedure or the common law
3 to challenge the propriety of the Receiving Party's designation of material as privileged, work
4 product, or subject to other protection. Furthermore, if Bungie has good cause to believe that the
5 provisions of this Protective Order have been violated, Bungie may request that the Court conduct
6 an in-camera review of said handwritten notes.
7

8 a. SciTools Understand; Microsoft Visual Studio Community Edition; Eclipse
9 IDE; PowerGREP; ExamDiff Pro; Cygwin Shell; Notepad++; Source
10 Navigator; Git; Doxygen; GraphViz

11 6. Bungie shall provide the receiving Party with information explaining how to start,
12 log on to, and operate the stand-alone computer(s) in order to access the produced Source Code
13 Material on the non-networked computers. The producing Party will produce Source Code
14 Material in computer searchable format on the non-networked computer(s) as described above.
15

16 7. Bungie shall be entitled to have one person monitor from outside of the Review
17 Room Plaintiffs' review personnel's actions in the Review Room to ensure compliance with the
18 provisions of this Order governing source code provided, however, that said person shall not be
19 permitted to view the screen of the source code computer(s). The source code inspection may be
20 monitored by Bungie's outside attorneys and/or others working with such counsel in a manner that
21 will not interfere with confidential, privileged or protected communications.
22

23 8. No person shall copy, e-mail, transmit, upload, download, print, photograph, cut
24 and paste, or otherwise duplicate any portion of Bungie's Highly Confidential Information
25 designated as "RESTRICTED HIGHLY CONFIDENTIAL NON-PARTY SOURCE CODE",
26 except as follows:
27

- 1 a) Unless parties agree otherwise, the non-networked computer(s) shall be connected
2 to a printer provided at the parties' expense with pre-bates labeled paper specific to
3 the Bungie source code. The Receiving Party shall be able to print to the printer
4 and retrieve printed source code on its own, but must use the provided pre-bates
5 labeled paper specific to the Bungie source code. The Receiving Party shall ensure
6 that an adequate amount of paper is reasonably provided.
7
- 8 b) The printed portions of the source code may not be taken from the location of the
9 inspection. Instead, Bungie's outside attorneys will produce a paper copy of the
10 portions of the source code printed during inspection within two business days from
11 Plaintiffs' print requests. The paper copy will be sent by overnight delivery to the
12 Receiving Party's outside counsel at the Receiving Party's expense.
13
- 14 c) Upon inspection, the Receiving Party shall create a Source Code Print/Access Log,
15 tracking the source code printed on a bates-numbered page basis by identifying the
16 product, version and actual file name or by identifying the complete path and file
17 name and shall provide the Source Code Print/Access Log to Bungie within three
18 (3) business days of first printing the code. The Receiving Party shall maintain the
19 Source Code Print/Access Log by further including at least the following
20 information: (i) the identity of the individual making the copies or printing the
21 subject material; (ii) the address at which the prints or copies were made; (iii) the
22 number of prints or copies made, (v) the bates number range of the material being
23 printed or copied; and (vi) the identity of every person who has accessed the source
24 code. The Source Code Print/Access Log shall be retained by outside counsel for
25 the Receiving Party for a period of not less than one year after entry by a federal
26 court of a final judgment from which no appeal (including petition to the Supreme
27

1 Court for a writ of certiorari) has been or can be taken. For the avoidance of doubt,
2 the decision of on appeals court is not final until entry by the court of the mandate
3 (“Final Judgment”). The Receiving Party shall make available the Source Code
4 Print/Access Log to Bungie within three business days of Bungie’s request.

5
6 d) The Receiving Party shall only print those portions of the source code reasonably
7 necessary for this case, and in no event more than 200 pages per game. All
8 information printed from the printer shall be on 12 point font bearing bate-numbers
9 and the legend “RESTRICTED HIGHLY CONFIDENTIAL NONPARTY
10 SOURCE CODE” and having a header and footer no smaller than one inch each.

11
12 e) Any printed pages of source code, and any other documents or things reflecting
13 source code that have been designated by Bungie as “RESTRICTED HIGHLY
14 CONFIDENTIAL NON-PARTY SOURCE CODE” may not be (a) used other than
15 in connection with this Action; (b) copied, digitally imaged or otherwise
16 duplicated, except by outside counsel for the Receiving Party for the sole purpose
17 of creating hard duplicate copies for retention in multiple offices of outside counsel
18 or by the outside experts or consultants contemplated by Paragraph 10 of the Texas
19 Protective Order, for use solely in connection with the Action; and (c) in limited
20 excerpts necessary to attach as exhibits to depositions, expert reports or court
21 filings.

22
23 f) Any paper copies designated “RESTRICTED HIGHLY CONFIDENTIAL
24 NONPARTY SOURCE CODE” shall be maintained at all times in a locked and
25 secure location, and shall be stored or viewed only at the following locations: (i) the
26 offices of outside counsel for a Party; (ii) the offices of outside experts or
27 consultants who have been approved to access source code; (iii) the site where any

1 deposition is taken (so long as the persons present are eligible to view
2 RESTRICTED HIGHLY CONFIDENTIAL NON-PARTY SOURCE CODE);
3 (iv) this Court or the Texas Court (in pleading filed under seal or in open court in
4 the presence of only persons eligible to view RESTRICTED HIGHLY
5 CONFIDENTIAL NON- PARTY SOURCE CODE); or (v) any intermediate
6 location necessary to transport the information to a hearing, trial or deposition.
7

8 g) The Receiving Party shall not print source code which has not been reviewed on
9 the source code computer, or in order to review the source code elsewhere in the
10 first instance, i.e., as an alternative to reviewing that source code electronically on
11 the source code computer.
12

13 9. The Receiving Party may use Highly Confidential Information including source
14 code in connection with the Action as follows: (1) in infringement contentions served in
15 connection with the Action; (2) at a deposition, provided that it will only make as many copies as
16 necessary no earlier than 72 hours prior to such deposition, and only of the specific pages it intends
17 to actually use at the deposition; or (3) in a filing in this Court or the Texas Court in accordance
18 with the terms of this order provided that the Receiving Party notifies Bungie when such filing is
19 made; or (4) in this Court or the Texas Court pursuant to the terms herein.
20

21 10. Source Code Material may only be transported by the receiving Party at the
22 direction of a person authorized under paragraph 12 below to another person authorized under
23 paragraph 12 below, on paper via secure and reliable hand carry. Source Code Material may not
24 be transported or transmitted electronically over a network of any kind, including a LAN, an
25 intranet, or the Internet except as provided in paragraph 8(e) above and as necessary to create
26 documents which, pursuant to the Court's rules, procedures and order, must be filed or served
27 electronically.

1 11. Notwithstanding any other provision herein, Bungie’s “RESTRICTED HIGHLY
2 CONFIDENTIAL NON-PARTY SOURCE CODE” material shall not leave the geographic
3 boundaries of the continental United States.

4 12. Only the following individuals shall have access to “RESTRICTED HIGHLY
5 CONFIDENTIAL NON-PARTY SOURCE CODE” material, absent the express written consent
6 of Bungie or further court order:
7

8 a) Outside counsel of record for the parties to the Action, including any attorneys,
9 paralegals, technology specialists and clerical employees of their respective law
10 firms;

11 b) Up to four outside experts or consultants, each of which outside expert or consultant
12 shall be pre-approved in accordance with Paragraph 13 below, and specifically
13 identified as eligible to access source code.

14 c) This Court or the Texas Court, any court appointed technical advisor or mediator,
15 the jury, court personnel, and court reporters or videographers recording testimony
16 or other proceedings in this action; persons authorized to view source code pursuant
17 to this sub-paragraph shall not retain or be given copies of the source code except
18 while testifying.
19

20 d) Any other person upon order of this Court or the Texas Court.
21

22 13. The Receiving Party may designate retained expert consultants (either testifying
23 or non-testifying) (“Consultants”) to have access to the Highly Confidential Information under this
24 Protective Order if the consultants are: (i) neither employees of a party nor anticipated to become
25 employees of a party in the near future; and (ii) engaged by or on behalf of a party as bona fide
26 consultants or experts for purposes of this Action. The following procedures shall govern the
27 designation of Consultants under this Protective Order:

- 1 a) The Receiving Party shall provide Bungie with the following information at least
2 ten days before the Consultant first inspects Highly Confidential Information,
3 unless otherwise agreed by the parties: (i) sufficient information to fully identify
4 the Consultant; (ii) a current resume or curriculum vitae of the Consultant if
5 available; (iii) identification of all current consulting engagements and prior
6 consulting engagements for the prior four years; and (iv) a copy of a completed and
7 signed undertaking in the form attached as Exhibit A to this Stipulated
8 Supplemental Protective Order.
9
- 10 b) Within five business days after receipt of the information and signed undertaking
11 described in subparagraph (a), Bungie may object in good faith in writing to the
12 proposed Consultant if facts available to that party show that there is a reasonable
13 likelihood that the proposed Consultant will use or disclose Bungie's Highly
14 Confidential Information for purposes other than those permitted by this Protective
15 Order. The written objection shall set forth the specific factual basis for the
16 objection. Failure to object in writing to a proposed Consultant within five business
17 days shall not preclude Bungie from objecting to continued access to Highly
18 Confidential Information by a Consultant where facts subsequently learned suggest
19 that an appropriate basis for objection exists.
20
- 21 c) If Bungie so objects, the parties shall meet and confer in good faith in an attempt to
22 resolve their dispute without resort to the Court. If the dispute is not thereby
23 resolved, then the party designating the Consultant may seek a ruling from the
24 Court and shall bear the burden of showing why disclosure should be permitted.
25 Pending a ruling by the Court, the proposed consultant shall not have access to the
26 Highly Confidential Information.
27

1 14. Any attorney, consultant, witness, or other person associated with Plaintiffs who
2 views any Bungie Highly Confidential Information prior to trial shall not participate, directly or
3 indirectly, in any patent application prosecution, or any post grant review proceeding (including
4 *Inter Partes* Review Proceedings before the Patent Trial and Appeal Board) for the particular
5 technology field at issue in the patents-in-suit (*i.e.*, rendering lighting and shadows in computer
6 graphic simulation) and concerning a patent subject to amendment, nor consult with attorneys or
7 experts participating in any such prosecution or post-grant review proceeding and shall not
8 participate, directly or indirectly, in analysis of patents being considered to be acquired, acquired,
9 exclusively licensed, or purchased by Plaintiffs until at least three (3) years have passed from the
10 conclusion of the Action. For the avoidance of doubt, this provision does not prohibit any attorney,
11 consultant, witness, or other person associated with Plaintiffs who views any Bungie Highly
12 Confidential Information from participating in a post grant reviewing proceeding (including *Inter*
13 *Partes Review* Proceeding) challenging the patents-in-suit.
14
15

16 15. All persons who have access to information pursuant to this Supplemental
17 Protective Order shall be subject to the jurisdiction of this Court for purposes of enforcing this
18 Supplemental Protective Order.
19

20 16. The Parties agree that the provisions of this Stipulated Supplemental Protective
21 Order may be modified by the Court upon a showing of good cause. In the event that a dispute
22 concerning the provisions of this Stipulated Supplemental Protective Order arises between the
23 Parties, the Parties agree to meet and confer within 5 business days of said dispute arising. If, after
24 meeting and conferring, the Parties are unable to resolve their dispute, the Parties agree to jointly
25 seek resolution of the dispute from the Court.
26
27

1 IT IS SO STIPULATED.

2 Dated: June 13, 2019

3 /s/ Gregory L. Watts

4 /s/ Stephanie L. Jensen

Gregory L. Watts, WSBA #43995

Stephanie L. Jensen #42042

WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

701 Fifth Avenue, Suite 5100

Seattle, WA 98104-7036

206-883-2500 Fax: 206-883-2699

Email: gwatts@wsgr.com

Email : sjensen@wsgr.com

10 Jose C. Villarreal

Shyamkrishna Palaiyanur

WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

900 South Capital of Texas Highway

Las Cimas IV, Fifth Floor

Austin, TX 78746

512-338-5400

Email: jvillarreal@wsgr.com

Email: spalaiyanur@wsgr.com

Attorneys for Movant

17 Dated: June 13, 2019

BUETHER JOE & CARPENTER, LLC

18 /s/ Michael C. Pomeroy

19 Michael C. Pomeroy

Eric W. Buether (*Lead Counsel*)

20 Christopher M. Joe

Michael D. Ricketts

21 Blake W. Buether

1700 Pacific Avenue, Suite 4750

Dallas, TX 75201

214-466-1271 Fax: 214-635-1827

Email: michael.pomeroy@bjciplaw.com

Email: eric.buether@bjciplaw.com

Email: chris.joe@bjciplaw.com

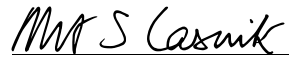
Email: mickey.ricketts@bjciplaw.com

Email: blake.buether@bjciplaw.com

26 *Attorneys for Plaintiffs Infernal Technology,*
27 *LLC and Terminal Reality, Inc.*

1 IT IS SO ORDERED.

2
3 Dated this 13th day of June, 2019.

4 

5 Robert S. Lasnik

6 United States District Judge

7 *Submitted by:*

8
9 Gregory L. Watts, WSBA #43995
10 Stephanie L. Jensen, WSBA #42042
11 **WILSON SONSINI GOODRICH & ROSATI**
12 Professional Corporation
13 701 Fifth Avenue, Suite 5100
14 Seattle, WA 98104-7036
15 206-883-2500 Fax: 206-883-2699
16 Email: gwatts@wsgr.com
17 Email: sjensen@wsgr.com

18 Jose C. Villarreal
19 Shyamkrishna Palaiyanur
20 **WILSON SONSINI GOODRICH & ROSATI**
21 Professional Corporation
22 900 South Capital of Texas Highway
23 Las Cimas IV, Fifth Floor
24 Austin, TX 78746
25 512-338-5400
26 Email: jvillarreal@wsgr.com
27 Email: spalaiyanur@wsgr.com

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INFERNAL TECHNOLOGY, LLC, a Texas
limited liability corporation, and
TERMINAL REALITY, Inc., a Texas corporation

Plaintiffs,

v.

ACTIVISION BLIZZARD, INC., a Delaware
corporation

Defendant.

CASE NO.: _____

[Civil Action No. 3:18-cv-1397-M,
pending in the United States District
Court for the Northern District of Texas]

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____ [print or type full name], of

_____ hereby affirm that:

Information, including documents and things designated as “Confidential,”
“CONFIDENTIAL—OUTSIDE COUNSEL ONLY,” “Restricted Confidential—Source Code,”
or “RESTRICTED HIGHLY CONFIDENTIAL NON-PARTY SOURCE CODE” as defined in
the Texas Protective Order or this Protective Order (collectively, the “Protective Orders”)
entered in relation to *Infernal Technology, LLC and Terminal Reality, Inc v. Activision Blizzard,
Inc., Civil Action No. 3:18-cv-1397-M*, pending in the United States District Court for the
Northern District of Texas (the “Action”), will be provided to me pursuant to the terms and
restrictions of the Protective Orders.

1 I have been given a copy of and have read the Protective Orders.

2 I am familiar with the terms of the Protective Orders and I agree to comply with and to be
3 bound by their terms. I submit to the jurisdiction of this court for enforcement of the Protective
4 Orders.

5 I agree not to use any Confidential, CONFIDENTIAL—OUTSIDE COUNSEL ONLY,
6 Restricted Confidential—Source Code information, or Restricted Highly Confidential Non-Party
7 Source Code disclosed to me pursuant to the Protective Orders except for purposes of the Action
8 and not to disclose any of this information to persons, other than those specifically authorized by
9 the Protective Orders, without the express consent of the Party who designated the information
10 as confidential or by order of the Court.
11

12 I understand that I am to retain all documents or materials designated as or containing
13 Confidential, CONFIDENTIAL—OUTSIDE COUNSEL ONLY, Restricted Confidential—
14 Source Code information, or Restricted Highly Confidential Non-Party Source Code in a secure
15 manner, and that all such documents and materials are to remain in my personal custody until the
16 completion of my assigned duties in this matter, whereupon all such documents and materials,
17 including all copies thereof, and any writings prepared by me containing any Confidential,
18 CONFIDENTIAL—OUTSIDE COUNSEL ONLY, Restricted Confidential—Source Code
19 information, or Restricted Highly Confidential Non-Party Source Code are to be returned to
20 counsel who provided me with such documents and materials.
21
22
23
24

25 CITY, STATE WHERE SWORN AND SIGNED:

26 PRINTED NAME: _____

27 SIGNATURE: